

ORIGINAL

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of	)	ET Docket No. 92-28
CONSTELLATION COMMUNICATIONS, INC.	)	File No. PP-29
ELLIPSAT CORPORATION	)	File No. PP-30
LORAL QUALCOMM SATELLITE SYSTEMS, INC.	)	File No. PP-31
Requests for Pioneer's Preference in	)	
Connection With Applications to	)	
Construct Low-Earth Orbit Satellite	)	
Systems in the RDSS Bands	)	

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APR - 8 1992

To: The Commission

Federal Communications Commission  
Office of the Secretary

COMMENTS OF TRW INC.

TRW Inc. ("TRW"), by its attorneys, hereby comments on the above-captioned pioneer's preference requests filed by Constellation Communications, Inc. ("Constellation"), Ellipsat Corporation ("Ellipsat"), and Loral Qualcomm Satellite Systems, Inc. ("LQSS"). Constellation, Ellipsat, and LQSS have each requested a pioneer's preference in connection with their applications for authority to establish low Earth orbit ("LEO") mobile satellite systems in the 1610-1626.5 MHz and 2483.5-2500 MHz frequency bands (the "RDSS bands"),<sup>1/</sup> and their associated petitions for rule making.<sup>2/</sup>

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<sup>1/</sup> See Constellation Application, File Nos. 17-DSS-P-91(48) and CSS-91-013; Ellipsat Application, File Nos. 11-DSS-P-91(6) and 18-DSS-P-91(18); and LQSS Application, File Nos. 19-DSS-P-91(48) and CSS-91-014.

<sup>2/</sup> See Constellation Petition for Rule Making, RM-7771; Ellipsat Petition for Rule Making, RM-7805; and LQSS Petition for Rule Making, RM-\_\_\_\_\_.

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The pioneer's preference requests filed by Constellation, Ellipsat, and LQSS, along with pioneer's preference requests filed by TRW and Motorola Satellite Communications, Inc., were consolidated into ET Docket No. 92-28 in Public Notice, Requests for Pioneer's Preference Filed (released March 9, 1992). The five applicants requesting pioneer's preferences for nongeostationary satellite systems that would provide radiodetermination and mobile satellite services in the 1610-1626.5 MHz and 2483.5-2500 MHz bands (the "RDSS bands") have proposed to use the spectrum in starkly different ways. Four of the applicants have proposed to employ frequency plans and transmission techniques that utilize all or most of the 33 MHz of RDSS band spectrum in a manner that would enable multiple systems to be established, while the fifth applicant proposes to operate bi-directionally in 10 MHz of spectrum in a fashion that would preclude any of the other four applicants from establishing their systems as proposed in their pending applications.

The grant of the pioneer's preference request of any one applicant would therefore necessitate the tentative rejection of the application or applications that are mutually exclusive with that proposal. Such a grant would deprive any applicant whose approach was not selected of its right to compete and obtain meaningful comparative consideration, as the Commission would presumably treat the innovativeness of the proposal of the applicant dubbed a "pioneer" as a determinative

factor in its analysis. Debate on the relative merits of the differing technical approaches would thus be artificially skewed toward the innovativeness issue; the Commission would be faced with the prospect of making a public interest determination on the basis of an incomplete record; and the entire proceeding would be subject to extensive delays in the event that the court of appeals were to determine that a non-"preferenced" applicant were impermissibly denied its right to have its application considered comparatively.<sup>3/</sup>

Under these circumstances, TRW urges the Commission to determine that it is inappropriate at this stage to grant any of the pioneer's preference requests that were recently consolidated into ET Docket No. 92-28. In the Pioneer's Preference proceeding, the Commission emphasized that it did "not intend to bestow preferences casually," and that "an applicant for a pioneer's preference will have a significant burden to persuade the Commission that its proposal has sufficient merit." See Establishment of Procedures to Provide

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<sup>3/</sup> In this regard, TRW recently petitioned the Commission to reconsider its determination in the Pioneer's Preference proceeding that the new procedures are consistent with the decision of the United States Supreme Court in Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). See TRW Petition for Further Reconsideration, GEN Docket No. 90-217 (filed April 6, 1992). There are serious doubts as to whether the Commission can, consistent with the statutory mandate of Section 309 of the Communications Act, establish for mutually exclusive applications that have been accepted for filing a post-acceptance "threshold eligibility criterion" that would deny one or more of the applicants their right to meaningful comparative consideration.

a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd 3488, 3492 (1991) ("Pioneer's Preference Order"), recon. in part, FCC 92-57 (released February 26, 1992) ("Pioneer's Preference Recon. Order"), further recon. pending. The Commission also recognized that "in some cases where multiple preference requests are filed, it may better serve the public not to grant any of them." Pioneer's Preference Order, 6 FCC Rcd at 3495. TRW believes that the instant proceeding is precisely the type where grant of any of the requests would be contrary to the public interest.<sup>4/</sup>

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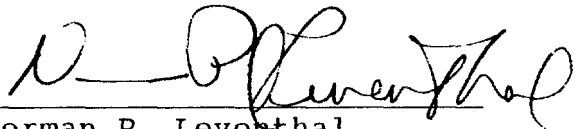
<sup>4/</sup> Notwithstanding TRW's belief that the public interest, along with the national interest in the expeditious inauguration of mobile satellite services and radiodetermination satellite services via nongeostationary satellites, would best be served by not granting any of the five pioneer's preference requests in ET Docket No. 92-28 at this time, it is possible that the Commission may view matters differently. In the event that a blanket denial of the requests for pioneer's preferences is not issued, TRW maintains that it has satisfied the prerequisites for grant of a pioneer's preference that were announced in the Pioneer's Preference Order, as modified by the Pioneer's Preference Recon. Order. Accordingly, under this contingency, the Commission should grant TRW's request for pioneer's preference for the reasons stated in its petition in File No. PP-33.

In short, and for the reasons stated above, TRW urges the Commission not to grant any of the pioneer's preference requests currently pending in ET Docket No. 92-28 at this time.

Respectfully submitted,

TRW Inc.

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April 8, 1992

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CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, hereby certify that a copy of the foregoing "Comments of TRW Inc." was served by first-class mail, postage prepaid, this 8th day of April, 1992 on the following persons:

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